

Employment and Training Administration, Labor

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AUTHORITY: 38 U.S.C. chapters 41 and 42; Wagner-Peyser Act, as amended, 29 U.S.C. 49 et seq.; sec. 104 of the Emergency Jobs and Unemployment Assistance Act of 1974 Pub. L. 93-567, 88 Stat. 1845, unless otherwise noted.

Subpart A—Basic Services of the Employment Service System [Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

SOURCE: 45 FR 39459, June 10, 1980, unless otherwise noted.

§ 653.100 Purpose and scope of subpart.

This subpart sets forth the principal regulations of the United States Employment Service (USES) for counseling, testing, and job and training referral services for migrant and seasonal farmworkers (MSFWs) on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. It also contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs, including the regulations under this subpart. Special services to ensure that MSFWs receive the full range of employment

related services are established under this subpart.

§ 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).

(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protections, including the full range of counseling, testing, and job and training referral services as are provided to non-MSFWs. In providing such services, the State agency shall consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

(b) Each State agency shall assure that, in a local area, the same local offices, including itinerant and satellite offices, but exclusive of day-haul operations, offer services to both non-MSFWs and MSFWs. Separate farm labor service local offices, which offer only farmwork to agricultural workers while another local office serving the same geographical area offers other JS services to other applicants, are prohibited so that all applicants receive employment services on the same basis.

§ 653.102 Job information.

All State agencies shall make job order information conspicuous and available to MSFWs in all local offices. This information shall include Job Bank information in local offices where it is available. Such information shall be made available either by computer terminal, microfiche, hard copy, or other equally effective means. Each significant MSFW local office shall provide adequate staff assistance to each MSFW to use the job order information effectively. In those offices designated as significant MSFW bilingual offices, such assistance shall be provided to MSFWs in Spanish and English, wherever requested or necessary, during any period of substantial MSFW activity.

§ 653.103 MSFW job applications.

(a) Every local office shall determine whether or not applicants are MSFWs as defined at § 651.10 of this chapter.

(b) Except as provided in § 653.105, when an MSFW applies for JS services at a local office or is contacted by an Outreach worker, the services available through the JS shall be explained to the MSFW. In local offices which have been designated as significant MSFW bilingual offices by ETA, this explanation shall be made in Spanish, if necessary or requested during any period of substantial MSFW activity. Other local offices shall provide bilingual explanations wherever feasible.

(c) The local office staff member shall provide the MSFW a list of those services. The list shall be written in English and Spanish and shall specify those services which are available after completion of a full application and those services which are available after completion of a partial application. The JS staff member shall explain to each MSFW the advantages of completing a full application.

Applications shall be reviewed periodically by the local office manager or a member of his/her staff to ensure their accuracy and quality. Applications and the application-taking process shall also be reviewed during State and Federal onsite reviews by the State and Regional MSFW Monitor Advocates and/or review staff, who shall check overall accuracy and quality, and offer technical advice on corrections or improvements.

(d) If the MSFW wishes to complete a full application, the staff shall provide all assistance necessary to complete the application and shall ensure that the form includes complete information. It shall include, to the extent possible, the significant history of the MSFW's prior employment, training and educational background and a statement of any desired employment and any training needs in order to permit a thorough assessment of the applicant's skills, abilities and preferences. All applicable items shall be completed according to the ETA instructions for preparation of the application card (ES-511). Additional Dictionary of Occupational Titles codes or keywords shall be assigned, where appropriate, based on the MSFW's work

history, training, and skills, knowledges, and abilities. Secondary cards shall be completed and separately filed when keywords are not used. In extremely small local offices where the limited applicant load and file size does not require completion of secondary cards, additional D.O.T. codes shall be noted on the primary application card.

(e) If an MSFW wishes any JS service, and does not wish or is unable to file a full application, the interviewer shall try to obtain as much information as possible for a partial application. The interviewer shall enter the information on the partial application. The interviewer shall offer to refer the applicant to any available jobs for which the MSFW may be qualified, and any JS services permitted by the limited information available. He/she shall advise the MSFW that he/she may file a full application at any time.

(f) Partial applications shall be completed according to ETA instructions.

(g) Partial applications for MSFWs shall be filed in accordance with local office procedures for filing other partial applications.

(h) To minimize the need for additional applications in other offices, States shall issue JS cards to MSFWs at the initial visit under the following conditions:

(1) When automated data retrieval systems are available in the State. In this instance, JS staff shall advise the MSFW that the JS card may be presented at any other JS office in the State and that services will be provided without completion of an additional application unless the services requested require additional information for adequate service delivery.

(2) When an MSFW is referred on an interstate or intrastate order. In this instance, when it is known to the order-holding local office (through the presentation of an JS card or otherwise) that the MSFW has completed a full application or partial application in the applicant holding office or elsewhere, an additional application shall

not be taken by the order-holding office unless the MSFW requests JS services in addition to referral on the clearance order.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 46 FR 7772, Jan. 23, 1981; 47 FR 145, Jan. 5, 1982]

§ 653.104 Services to MSFW family members, farm labor contractors, and crew members.

(a) In addition to other requirements in this subpart, the following special requirements are established for services to MSFW family members, farm labor contractors and crew members. Except as provided at §§653.103(e) and 653.105, no local office shall refer an MSFW family or crew unless each working member of the family or crew being referred, has filed either a full or partial application pursuant to §653.103(b) at a local office or has been issued a JS card in instances set forth in §653.103(h). Local offices may, upon request, provide general information, e.g., the types of crops in other areas, to farm labor contractors and family heads prior to the registration of all working members.

(b) No local office shall accept an application from an individual for employment as a farm labor contractor or fill an agricultural job order submitted by a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") unless the FLC or FLCE shows or obtains a valid FLC certificate, or FLCE identification card where required by Federal law, and a valid State certification where required by State law. If a FLC or FLCE is temporarily without his or her valid FLC certificate or FLCE identification card the local office shall try to verify the existence of the valid certificate or identification card by telephoning the State central office and/or the Department of Labor's Employment Standards Administration regional office. The local office, however, shall not serve the FLC or FLCE until the existence of the valid certificate or identification card is verified.

(c) Local offices may refer workers to registered farm labor contractors who

are employers provided that a valid job order has been placed with the local office which clearly specifies all the terms and conditions of employment with the farm labor contractor shown as employer of record. Before a local office may refer workers to a farm labor contractor offering employment in another area of the State or in another State, one of two requirements must be met: Either a valid interstate clearance order from another State agency is on file in the office, or an intrastate order has been received from an office in another area of the State which is not within commuting distance of the office where the farm labor contractor is recruiting workers. Unless one of these conditions exists, the local office may only refer workers to a registered farm labor contractor who is an employer placing a local job order. Whenever the job order includes the provision of transportation, a FLC certificate authorizing transportation must be shown before workers are referred on the order.

§ 653.105 Job applications at day-haul facilities.

If the State agency is operating a day-haul facility under the exceptional circumstances provisions described in §653.106(a), a list of JS services shall be distributed and a full application shall be completed whenever an MSFW requests the opportunity to file a full application unless this is impractical at that time. In such cases, a full application shall be taken at the earliest practical time. In all other cases, a list of JS services shall be distributed.

§ 653.106 JS day-haul responsibilities.

(a) State agencies shall not establish, operate, or supervise any agricultural day-haul facilities unless exceptional circumstances warrant such action and prior approval of the Regional Administrator is obtained.

(b) No JS applicants shall be referred to non-JS operated day-haul facilities, unless the applicant is referred on a specific job order and is provided with a checklist summarizing wages, working conditions, and other material specifications on the job order. Such checklists, where necessary, shall be in English and Spanish. State agencies